88-1199

No. 88 -

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

ROLAND E. HEMON, SON, FOR HIMSELF AND OLIVETTE D. HEMON, HIS MOTHER,
Petitioners,

v.

OFFICE OF PUBLIC GUARDIAN, Armand Hemon, Heloise Davis, and Beatrice Houle,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE NEW HAMPSHIRE SUPREME COURT

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December 16, 1988

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90 pp

QUESTIONS PRESENTED*

1. Does the intentional, irresponsible, gross negligence of an attorney with respect to preserving the rights of appeal of a client in the New Hampshire Supreme Court in effect deprive that client of his right to due process guaranteed by the 14th Amendment of the U.S. Constitution?

2. Does the intentional, irresponsible, gross negligence of an attorney with respect to preserving the rights of appeal of a client in the New Hampshire Supreme Court in effect create a climate of discrimination against that client, as the future result of the denial of appeal was protection of the lower state courts and the opposition from accountability with respect to perjury, violations of various state statutes, violations of various federal statutes, and

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* All parties to the proceeding in the court below are listed in the caption.

violations of both the state and federal constitutions on the one hand, while serving to deny future due process and equal protection of laws guaranteed by the 14th Amendment of the U.S. Constitution on the other?

3. Does the client injured and betrayed as described above act " frivolously " in trying to assert in the state courts his right to due process and equal protection of laws as guaranteed by the 14th Amendment of the U.S. Constitution?

4. Should a clients rights to due process and equal protection of the laws guaranteed by the 14th Amendment of the U.S. Constitution be sacrificed, because of the intentional, irresponsible, gross negligence of an attorney failing to preserve the rights of appeal of that client in the state's highest court?

5. Does such a sacrificing of due process and equal protection of laws rights guaranteed by the 14th Amendment of the U.S. Constitution for such an inane reason as the intentional, irresponsible, gross negligence of an attorney in preserving the appeal rights in a state's highest court, in effect constitute the unconstitutional repealing of the 14th Amendment of the U.S. Constitution, rendering it meaningless from the citizen's perspective?

6. Does the decision of the New Hampshire Supreme Court in effect grant the power to a misbehaving attorney of repealing the 14th Amendment of the U.S. Constitution, this misbehavior in effect outweighing the two Houses of Congress and 38 states, who really have the constitutional authority to do so?

7. Does a rule established by a state court outweigh and outrank in the hierarchy of law the state statutes, state constitution, federal statutes, and the U.S. Constitution, or is the reverse order true?

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v.

OFFICE OF PUBLIC GUARDIAN, Armand Hemon, Heloise Davis, and Beatrice Houle,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT

Petitioner Roland E. Hemon, for himself and his mother, Olivette D. Hemon, petitions the Court to issue a writ of certiorari to the New Hampshire Supreme Court in this case.

OPINIONS BELOW

The final decision of the New Hampshire Supreme Court in its docket number 88-074 is dated September 23, 1988, and this order represents exhaustion of state remedies in this case. This order is set forth at A1. All the orders of the New Hampshire Supreme Court in this case are similarly uninformative, because of their brevity.

JURISDICTION

This Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257 as amended June 27, 1988. § 1257 relates to direct appeal from the New Hampshire Supreme Court to the U.S. Supreme Court:

" § 1257. State Courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, priviliege, or immunity is specially set up or

claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United states."

STATUTES INVOLVED

N.H. Supreme Court Rule 7 which in brief requires, that in order to be timely filed, a Notice of Appeal addressed to that court must be filed within 30 days of a lower state court's order, decree etc..

18 U.S.C. §241, Conspiracy against rights of citizens:

" If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws or the United States, or because of his having so exercised the same;..."

18 U.S.C. §242, Deprivation of rights under color of law:

" Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privilieges, or immunities secured or protected by the Constitution or laws of the United States..."

18 U.S.C. § 1201(a)(1) and 18 U.S.C. § 1201(b) **Kidnaping.**

"(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts or carries away and holds for ransom, or reward or otherwise any person except in the case of a minor by the parent thereof, when: (1) the person is willfully transported in interstate or foreign commerce;..... (b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce."

N.H. RSA 547-B:3,II states as follows:
" In other instances when guardianship services are required and there is NO RELATIVE, FRIEND, OR OTHER INTERESTED PERSON AVAILABLE, WILLING, AND ABLE TO SERVE IN SUCH CAPACITY, the probate court MAY APPOINT the public guardianship and protection program as guardian of the person, estate, or both person and estate, as may be deemed appropriate, provided that there are funds available to pay for such services."

STATEMENT

A. Facts and Argument.

As this petition for writ of certiorari is written by one acting pro-se and a non-attorney, it reflects the opinions, logic, and views of an injured and abused client, who is a taxpayer and a citizen of the United

States.

N.H. Supreme Court # 88-074, which is the subject matter of this petition for writ of certiorari, originated in guardianhsip proceedings, which were initiated by Armand Hemon, brother, and Heloise Davis, sister of the petitioner Roland E. Hemon (REH) against their mother, the petitioner Olivette D. Hemon (ODH). This guardianship action was initiated by the respondents Armand Hemon and Heloise Davis contrary to the expressed wishes, desires, and plans of the petitioner ODH, and the petitioner REH supported his mother, the petitioner ODH, in her attempts to remain free of the respondents guardianship intentions. The guardianship initiative of the respondents Armand Hemon and Heloise Davis began in May of 1984. Beatrice Houle, another respondent and a cousin of petitioner REH, participated as a witness against the petitioner ODH during the guardianship proceedings, which were heard by the N.H. Strafford County Probate Court during the

period August 1984 to April 11, 1985, on which date the Probate Court decreed, that the Office of Public Guardian, a private non-profit corporation would be guardian of person and estate of the petitioner ODH. The Office of Public Guardian (OPG) is yet another respondent.

The guardianship proceedings in the N.H. Strafford County Probate Court were charaterized by perjury, slander, innuendo, fraud, violations of state statutes, kidnaping (18 U.S.C. § 1201(a)(1) and 18 U.S.C. § 1201(b) See **STATUTES INVOLVED**), and violations of both the state and the federal constitutions. The appointment of the OPG as guardian of person and estate of the petitioner ODH was an arrogant and clear violation of N.H. RSA 547-B:3,II, which clearly states, that only in an emergency, when there is no relative, friend or other interested party willing, able, and available, is the Probate Court permitted to act as it did, **UNDER COLOR OF STATE LAW.** (See **STATUTES**

INVOLVED).

In order to protect and foster the interests of the petitioners and challenge the machinations of the respondents, an attorney, Terrie Harman, was retained, and appeared for the petitioners during the guardianship proceedings during the period September 1984 to June 1985.

In spite of the fact, that this attorney had for months been pointing to all the aberrations and shortcomings of the guardianship proceedings and saying that this and that were grounds for an appeal to the N.H. Supreme Court, when the moment of truth arrived, she failed. This attorney took a trip to Scotland, and returned too late to make a timely filing of a Notice of Appeal, that is within the 30 days of the April 11, 1985 decree of the N.H. Strafford County Probate Court. This lapse is clearly admitted, in the MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS, (See A2 et seq.) which she filed in lieu of

the Notice of Appeal, this also being untimely. Paragraph 7 of this motion admits her being out of the country with the consequent unavailability for filing a timely Notice of Appeal.(See A2 et seq.).

The resulting dissension arising out of this intentional, irresponsible, and gross negligence on her part resulted in severance, and the petitioner REH, a legal ignoramus, facing legal problems of monumental proportions. The long history , maturity and complexity of the case produced insuperable obstacles in finding and retaining new counsel to assume the burden, forcing the petitioner REH to begin to pro se. The heavy financial burden of pursuing any legal action was also a monumental concern requiring the choice of pro se action or doing nothing about the disaster, that had occurred to both the petitioners ODH and REH.

As a result of the MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS the N.H.

Supreme Court granted permission to file a MOTION FOR LATE ENTRY OF NOTICE OF APPEAL, which the petitioner REH did along with a NOTICE OF APPEAL and later appendices, all of which addressed the many aberrations of law, constitutions, and perjury characterizing the case. The end result was an order of the N.H. Supreme Court dated January 31, 1986, which stated in part: **"...Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits,..."**. (See A7) This statement is a direct contradiction of the fact, that it was not the petitioner who failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits, the petitioner being a complete legal ignoramus at the time, but a misbehaving and vacationing attorney, who betrayed her client by intentionally, irresponsibly, and gross negligently failing to file a timely NOTICE OF APPEAL.

Thus did the N.H. Supreme Court cover-up

the many aberrations and shortcomings of the guardianship proceedings characterized by perjury, slander, innuendo, fraud, violations of state and federal statutes, and violations of both the state and federal constitutions. It hid behind a misbevaving attorney and unjustly passed the injurious consequences onto the client, that is victimized the innocent and unknowing client by punishing that client for the omissions and carelessness of another. This though N.H. Supreme Court Rule 2 permits the setting aside of the rules upon just cause shown. The N.H. Strafford County Probate Court had to be protected at all cost, even at the loss of credibility, integrity, and respect and at the risk of criminal violations of the federal code. (See 18 U.S.C. §§ 241 and 242 cited in **STATUTES INVOLVED**). In the process those who perjured themselves, committed slander and innuendo, have escaped all censure and accountability for their actions, which have grievously injured the petitioner ODH, as well as the

petitioner REH.

To allow any attorney through their intentional, irresponsible, gross negligence to negate due process rights, is to grant that attorney effective repeal power through misbehaving, of the 14th Amendment of the U.S. Constitution, which in itself is unconstitutional. Such power was granted to Terrie Harman, when her omissions and misbehavior were used to justify ignoring a case permeated with the aberrations and shortcomings mentioned earlier and thus allow injustice to persist and to proliferate into other areas and legal actions in the future. What the N.H. Supreme Court said through its order of January 31, 1986, was that a misbehaving citizen can repeal the protection and rights guaranteed by the 14th Amendment of the U.S. Constitution vis-a-vis another citizen. What it said, was that a misbehaving attorney would be permitted to establish the grounds for future legal actions by the opposition, by shielding that

opposition from the deserved consequences of their heinous past actions and giving an air of legitamacy to their future legal actions. By thus holding the N.H. Supreme Court shielded the actions and decisions of the lower state court, which because of the arbitrariness, capriciousness, and unreasonableness of these actions and decisions, and the illegalities and constitutional violations of both the state and federal constitions found therein, effectively created a special body of law for the petitioners of the instant case, making actions and decisions that are discriminatory, and therefore contrary to the equal protections of laws guaranteed by the 14th Amendment of the U.S. Constitution.

While preparing a brief for the UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, the petitioner REH in his research encountered a brief to # 88-1260 filed there, in which the attorney Michael L. Parker, of Portland, Maine, made an eloquent statement in his conclusion, (Page 21) which is so close

to the petitioner REH's observations, ideas, and conclusions, that it is quoted here:

"...Our society rightfully incarcerates law breakers because we demand they learn that society's rules must be obeyed--not only, because we consider the substance of a particular rule rational, but because conformity to rules in itself is a prerequisite to living in an ordered society. But what lesson is taught, and what justice is done, when an incarcerated person relies upon the rules and conforms to them for nine years, only to have the government change those rules and withdraw benefits for reasons totally unrelated to the individual's conduct? We teach a lesson of caprice and cynicism, and we do injustice. Worse, we reinforce the very attitude we seek to change: that society and government cannot be trusted, that even if one wants to conform to the rules, in the end government will do whatever it pleases.

Justice Jackson recognized this fundamental concern in his dissent in Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 387-88, 68 S. Ct. 1, 5 (1947) stating: "' It is very well to say that those who deal with the Government should turn square corners. But there is no reason why square corners should constitute a one way street. '" See also Brandt v. Hickel, 427 F 2d 53, 57 (9th Cir. 1970)(" To say to these appellants, "' the joke is on you. You shouldn't have trusted us,'" is hardly worthy of our great government. "); Menges v. Dentler, 33 Pa. 495, 500 (1859)(" Men naturally trust their government and they ought not to suffer for it. ").

We cannot expect those we punish to respect the rules of society and system of government and the need for rules, if government may break, change or ignore its own rules in meting out punishment. As Justice

Marshall so eloquently stated in dissent in Black v. Romano, 105 S. Ct. 2254, 2263 (1985): "' Thus while the state can define the rules of punishment initially...the state cannot change the rules in the middle of the game.'"

All society suffers when government acts this way, if for no other reason than that those prisonners who are released after having suffered governmental caprice are more likely to reason, that if government can break its own rules, they may break them as well."

True as this may be for criminals, how much truer it is for the non-criminal, the average citizen; the above comments agree with and reinforce what Part 1, Art. 38 of the N.H. Constitution states:

" A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, AND THEY HAVE A RIGHT TO REQUIRE OF THEIR LAWGIVERS AND MAGISTRATES, AN EXACT AND CONSTANT OBSERVANCE OF THEM, IN THE FORMATION AND EXECUTION OF THE LAWS NECESSARY FOR THE GOOD ADMINISTRATION OF GOVERNMENT."

Considering the above it would seem, that under the aegis of the New Hampshire Supreme Court, a misbehaving lawyer could effectively conspire with the opposition for mutual profit

with impunity. True a malpractice suit might be in the offing, but there would be the uncertainties of a law suit, added costs and emotional and physical strain, and even if given the small probability that such a suit were successful, there would remain the basic fact, that perjury, violations of state and federal statutes, and violations of both the state and federal constitutions would remain unpunished. The real perpetrators would escape unscathed and only the scapegoat attorney would suffer, or more reslistically her insurance company.

In the opinion of the petitioner REH, nothing so demonstrates the weakness of the opposition's case as the fact, that such a flimsy ploy, as blaming an attorney for non-compliance with the N.H. Spreme Court Rule 7 and passing the blame to the client in the form of not having preserved the right to appeal, was used to protect the lower probate court and the other perpetrators, and thus freeing them from all future adverse

repercussions. Above all it must be remembered, that the petitioner ODH suffered more at the hands of the N.H. Strafford County Probate Court and the respondents than she had during her entire troubled lifetime. The treatment the petitioner ODH had to bear was inhuman, cruel, sadistic, brutal, and filled with the characteristics of psychological torture. The petitioner REH suffered the frustration of helplessly being forced to witness this ill-treatment of his mother, the petitioner ODH, as well as the barbs aimed at him for daring to oppose the illegalities, inaccuracies and aberrations of the proceedings.

This is what the New Hampshire Supreme Court condoned and approved in defiance of the 14th Amendment rights to due process and equal protection of laws.

From **UNITED NUCLEAR CORP. v. GENERAL ATOMIC CO.**, N.M., 629 P.2d 231, at 313:

"...The following general principles, set forth in our earlier decision, are equally applicable here:

The requirements of due process are not technical, and no particular form of procedure is necessary for protecting substantial rights. The circumstances of the case dictate the requirements. The integrity of the fact finding process and the basic fairness of the decision are the principal considerations."

Before proceeding to the next facet, it should be noted, that the New Hampshire Supreme Court order dated January 31, 1986, (See A7) contains the opening phrase: " Office of Public Guardian's motion for summary affirmance is **DENIED**;...". The 10th word is emphasized, because the respondents in all future actions and at hearings kept insisting, that the word was affirmed, and the lower state courts acted as if the 10th word were indeed affirmed. What the OPG had requested in its prayer within its motion for summary affirmance, was summary affirmance of the N.H. Strafford County Probate Court decree of April 11, 1985 appointing them the guardian of person and estate of the petitioner ODH, and this summary affirmance was **DENIED** them by the New Hampshire Supreme Court. Though the petitioner REH made timely contradiction of

the word affirmed whenever it appeared either orally or in print, and insisted on the recognition of the word **DENIED**, this fact was ignored by the lower state courts in all actions and decisions, that followed the January 31, 1986 order of the New Hampshire Supreme Court. Even the New Hampshire Supreme Court carefully avoided the whole issue, when it was presented to them.

B. Proceedings Below.

The previous **Facts and Argument** serves as background to understand the advent of New Hampshire Supreme Court # 88-074, and its progress to this U.S Supreme Court and the petition for writ of certiorari filed with this Court.

The petitioner REH was facing an approaching trial in the New Hampshire Strafford County Superior Court, docket number 85-E-155, which had to do with assets of petitioners ODH and REH held individually and in joint tenancy.

As all previous attempts at having the state courts address the fraud and perjury permeating the guardianship proceedings, as well as the illegalities and various aberrations had failed, including the ignoring of an **INFORMATION** filed specifically addressing the perjury, the petitioner REH filed a **BILL IN EQUITY** on July 29, 1987 with the N.H. Strafford County Superior Court for consolidation with # 85-E-155. The respondents here were accused of fraud and perjury during the guardianship proceedings, which underlay and gave legitemacy to # 85-E-155. The N.H. Strafford County Superior Court denied consolidation of petitioner REH's **BILL IN EQUITY** and instead assigned it the docket number # 87-E-125 for later hearing, in the process denying the petitioner REH the right to question the credibility of Armand Hemon and Heloise Davis, respondents here, during the forthcoming trial in which they both testified and were the two main witnesses of four. The fraudulent basis of the trial itself

was thus protected as well.

Later, on Wednesday, October 21, 1987, a hearing on # 87-E-125 was held, the subject matter being Motion to Dismiss, Request for attorney's Fees and Costs. The order of the N.H. Strafford County Superior Court on # 87-E-125 dated October 21, 1987 (See A8) stated:

" The issues raised in this petition have been determined adversely to the plaintiff. I find the petition FRIVOLOUS. The guardianship ruling of April 11, 1985 WAS NOT APPEALED AND IS FINAL. The motion (to dismiss) is granted. "

The N.H. Strafford County Superior Court in its order ignores RSA 547-B:3,II (See **STATUTES INVOLVED,** Page 4) as did the N.H. Strafford County Probate Court, which clearly states, that a relative available, willing, and able to fulfill the capacity of guardian of person and estate has precedence over an OPG, and only in an emergency **MAY** the Probate Court appoint a public guardianship as is represented by the OPG, the emergency being no relative, no friend, or no interested person

available, willing, and able to fulfill the capacity of guardian. The N.H. Strafford County Superior Court thus sanctioned and approved the continued and continuing violation of a state statute, RSA 547-B:3,II, in spite of the fact, that this same judge recognized the value " of the services rendered by the defendant (here petitioner) to Olivette Hemon as regards her real estate and personal needs " (See A9 et seq. paragraphs 7, 8, 9, and 10). This observation, finding, and holding of the N.H. Strafford County Superior Court, it would seem, should have reinforced compliance with RSA 547-B:3,II, as if a relative, the petitioner REH, has done well in the past with respect to the real estate and needs of the petitioner ODH, it would assure such service in the future. This quality of service should have precluded exclusion from guardianship of person and estate of Olivette D. Hemon, the petitioner REH, son and relative, whom the petitioner ODH, approved and desired. Thus not

only the state statute was violated, but additionally the due process and equal protection of laws guaranteed by the 14th Amendment of the U.S. Constitution, both petitioners each in their own way being deprived of these rights. This the N.H. Strafford County Superior Court was willing to overlook rather than proceed to investigate and try the case presented by # 87-E-125.

And the reason for overlooking rather than proceed to investigate and try the case # 87-E-125: the subject matter was **"frivolous"** and not deserving investigation and trial. As if perjury and fraud, and the violations of state statutes and federal statutes, and violations of state and federal constitutions were **"frivolous"**. As if the cruel, inhuman, sadistic, brutal, and psychologically damaging treatment, that the petitioner ODH had to suffer as a consequence of all of these aberrations, was **"frivolous"**.

Two examples of perjury, one by respondent Armand Hemon, and the other by

respondent Heloise Davis are set forth in the **APPENDIX** at A13 et seq.. These examples were submitted to both the N.H. Strafford County Superior Court and the New Hampshire Supreme Court in order to show cause for further investigation and trial, and these submissions were ignored, evidently because they too were considered **"frivolous".**

And what of the attorney Terrie Harman mentioned earlier, whose intentional, irresponsible, gross nelgigence placed greater importance on her proper pleasure and vacation plans, than on filing a timely **NOTICE OF APPEAL** with the New Hampshire Supreme Court. This is considered **"frivolous"** behavior and of no significance by the N.H. Strafford County Superior Court.

The order dated October 21, 1987 of the N.H. Strafford County Superior Court stated, that **" the guardianship ruling of April 11, 1985 was not appealed and is final "** though it was well aware that an order dated January 31, 1986 (See A7) emanating

from the New Hampshire Supreme Court existed. It was also made aware, that the order of January 31, 1986 of the New Hampshire Supreme Court stated " **Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits...**", and that it was not the petitioner who failed, a legal ignoramus at the time, but the hedonistic attorney whose pleasure and vacation plans outweighed her contractual duties and responsibilities to see to it, that a timely **NOTICE OF APPEAL** with respect to the N.H. Strafford County Probate Court decree of April 11, 1985 was filed. To consider such an ethical offense " **frivolous** " is in the opinion of the petitioner REH an affront to common sense, logic, reason, right and justice, and furthermore, punishes the wrong party, the client rather than the perpetrator, the misbehaving attorney. This misbenaving attorney knowing the law, **intentionally** failed to preserve her client's right to appeal in order to benefit the opposition at the expense

of her client, the petitioner REH, as well as the petitioner ODH, who was depending on her for salvation from the fate the N.H. Strafford County Probate Court had forced upon her.

In **SCREWS v. U.S.**, 325 U.S. 91, at Page 96, the petitioner REH found a definition of intent as defined by Justice Holmes:

"...Holmes, The Common Law, pp. 66 et seq. But the general rule was stated in ELLIS v. UNITED STATES, 206 U.S. 246, 257, as follows: "' If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent. '" And see HORNING v. DISTRICT COLUMBIA, 254 U.S. 135, 137; NASH v. UNITED STATES, 229 U.S. 373, 377."

Since the failure of the misbehaving attorney was according to the above definition intentional, and the consequences of that misbehavior were beneficial to the OPG, one of the respondents of this case, it must follow she intentionally wanted to benefit the OPG, at the expense of the petitioners ODH and REH, whom she was supposedly representing. From this follows conspiracy and intent to subvert the rights of petitioners ODH and REH pursuant

to the 14th Amendment of the U.S. Constitution, as well as other rights. It must be noted here, that the respondent OPG entered the case on the initiative of the misbehaving attorney, for none of the participants including the N.H. Strafford County Probate Court knew of their existence except her, as they were a relatively new non-profit private corporation in the field at the time of her initiative. Thus we have cause to charge criminality on the part of the co-conspirators, the misbehaving attorney, Terrie Harman and the respondent OPG. This criminality follows by applying 18 U.S.C. §§ 241 and 242. (See **STATUTES INVOLVED**, Page 3). And this is what the N.H. Strafford County Superior Court called " **frivolous** " in its order dated October 21, 1987.

Furthermore, the N.H. Strafford County Superior Court ignored the part of the N.H. Supreme Court order dated January 31, 1986 saying " **Office of Public Guardian's motion for summary affirmance is DENIED...**", which

DENIED summary affirmance of their prayer, that the April 11, 1985 decree of the N.H. Strafford County Probate Court be summarily affirmed. Evidently this denial of summary affirmance is likewise " **frivolous** " in the eyes of the N.H. Strafford County Superior Court, because to consider this denial of summary affirmance as being other than " **frivolous** " would mean investigation and trial of # 87-E-125, which obviously was to be avoided at all cost.

The N.H. Strafford County Superior Court was made aware of the above at the hearing of October 21, 1987, in a timely subsequent filing of MOTION FOR RECONSIDERATION AND PROPOSAL, November 2, 1987, and a hearing of this motion held January 27, 1988, and denied the same day. The proposal included within the MOTION FOR RECONSIDERATION AND PROPOSAL was, that a Master be appointed by the N.H. Strafford County Superior Court at the expense of the petitioner REH, in order to study the record of the various proceedings and

ascertain the validity of the claims of the petitioner REH in his Bill in Equity, # 87-E-125. This too was denied.

Having exhausted the remedies to be had in N.H. Strafford County Superior Court, the next step was to file a timely NOTICE OF APPEAL with the N.H. Supreme Court, where N.H. Strafford County Superior Court # 87-E-125 became docketed as # 88-074 (See A34), the subject matter of this petition for writ of certiorari. The outcome was denial and declining without explanation of the NOTICE OF APPEAL, the motion for reconsideration, motion for summary reversal, and a petition for entrance.(See A36 through 38 and A1). All of these addressed the various aspects found in the body of this petition for writ of certiorari. The denial of the petition for entrance (A1) dated September 23, 1988 marks the exhaustion of state remedies, and the need to petition this U.S. Supreme Court with a petition for writ of certiorari.

Because of the N.H. Strafford County

Superior Court order of October 21, 1988, (A8) which described the subject matter of its # 87-E-125 as " **frivolous** " and the tacit approval of the N.H. Supreme Court with this observation delineated by the non-committal nature of its various orders, it seems, that the crux of the case lies with the N.H. Supreme Court order of January 31, 1986, and the consequences of the intentional irresponsibility, and intentional gross negligence existing in the behavior of a misbehaving hedonistic attorney in not filing a timely NOTICE OF APPEAL. As mentioned earlier this is the rankest form of injustice, namely to saddle an innocent, unknowing, and trusting client with the consequences resulting from the deficiencies in the behavior of a highly paid attorney. The exorbitant fees paid for such deleterious service adding insult to injury.

From 55 ALR3d 303, at 334, § 12:

" As a general rule, a client is bound by the acts of his attorney which are within the attorney's authority, and, as an extension of

this rule, professional negligence, unskilfulness, and incompetency of an attorney usually are imputed to his client and the client is bound thereby. Although only a few cases have specifically considered whether this rule justifies ordering a dismissal or default, or taking other action adversely bearing on the client, where an attorney fails to attend a pretrial conference, surprisingly, most of them have held that the rule was inapplicable under the circumstances."

What the petitioner REH thinks about a rule, that imputes injurious consequences to the client for the actions or non-actions of another, an attorney, who in these cases are highly paid trained professionals, who because of negligence, unskilfulness, and incompetency in effect betray a sacred trust, is well documented above for this case. It is nice to see at least some recognition being given by some courts for the reverse of the general rule above, as the negation of that general rule is rooted in common sense, right, reason, logic, and real justice. The only real purpose of the general rule is to protect attorneys from the consequences of their incompetent, irresponsible, and negligent behavior. The uncertainties of

malpractice suits and their high legal cost and concomitant emotional and physical strain can in no way compensate for the harm done, and effectively leave the real problem untouched and unresolved, that was caused by the incompetent, irresponsible, and negligent behavior. What is necessary in a given case, is that the case move on as if nothing had happened, to a conclusion unaffected by the incompetent, irresponsible, and negligent behavior of the attorney. The attorney can be chastised in other ways without punishing the client, whose only crime was to inadvertently bring an incompetent, irresponsible, and negligent attorney to court with him. The client can in this way have his case resolved as it should be with fact and justice ruling the day, rather than being governed by the incompetent , irresponsible, and negligent behavior of an attorney, that has cost so much money. The threat of malpractice suits is obviously no guarantee against incompetent, irresponsible, and negligent behavior by an

attorney, as such malpractice continues to happen, and clients continue unnecessarily to suffer the consequences. The general rule is in desperate need of being repealed, for the well being of the public, a public for which the legal system exists to serve, a public that supports the legal system with its taxes.

From 55 ALR3d 303, at 334:

" §12... the court said in Orange Empire Nat. Bank v. Kirk(1968) 259 Cal. App. 2d 347, 66 Cal Rptr 240, there are exceptional cases in which a client who is relatively free from personal neglect will be relieved from a default or dismissal attributable to the inaction or procrastination of his counsel since an attorney's authority to bind his client does not permit him to impair or destroy the client's cause of action or defense. "

Ibid. Page 334:

"...the court in Beasley v. Girten (1952, Fla) 61 So 2d 179, nevertheless concluded that the action should not have been dismissed with prejudice upon failure of the plaintiff's attorney to appear at a pretrial conference, since such a dismissal would in effect punish the litigant instead of his counsel ".

Ibid. Page 334 and 335:

"...the court in Andring v. Andring (1965) 3 Ohio App. 2d 417, 32 Ohio Ops 2d 543, 211 NE2d 59, said the attorney's negligence in failing to see notices of the pretrial conference or the hearing on the merits should not be

imputed to his client, because there was no question that there was any neglect on the client's part or that he did not have the right to fully rely on his attorney to inform him of any proceedings. "

From 30 ALR 9, at 46:

" § 5(c)...the court in People ex rel. Difanis v. Futia (1978) 56 Ill App 3d 920, 15 Ill Dec 184, 373 NE2d 530 said: On the facts before it, the court stated, the sanction imposed had been a punishment against the owners for acts of one of their counsel, and was a gross abuse of discretion . "

Ibid. Page 67:

" § 8(b)...the court in Sundor Electric, Inc. v. E.J.T. Constr. Co. (1975, Del. Sup) 337 A 2d 651 said: Finally, the court felt that, under the circumstances found in the record, counsel for the defendant, rather than the party itself, bore the responsibility for preparing and filing such an inadequate document and must answer for it. "

As can be seen from the above cited cases, the opinions of the petitioner REH with respect to the punitive and unjust aspects of imputing responsibility to clients for the incompetence, irresponsibility, and negligence of his attorney, has some support from some authorities. The repeal, revocation, and prohibition of the general rule for circumstances of attorney imcompetence,

irresponsibility, and negligence, would end the proliferation of unjustified punishing consequences the client must undeservedly bear, a proliferation which is unconscionable, a proliferation that can involve bankruptcy, physical and emotional suffering, sickness, heart attack, stroke, and/or hypertension, all unnecessary if things are nipped in the bud. Nipping things in the bud means confining the proceedings to the merits of a case, the facts, the truth, laws, and constitutions, and not allow such acts as the incompetent, irresponsible, and negligent behavior of an attorney to obliterate and cloud a case with an issue, that is inconseqnential and unsubstantive to the case.

The general rule characterized by the circumstances of an attorney's misconduct interferes with access to due process, is a bar to equal protection of laws, and in effect is discriminatory, in that it grants special privileges to the opposition by negating and eliminating the factual bases of a client's

case, simply because of the incompetence, irresponsibility, and negligence of a client's attorney, and thus the merits of a case are lost to the legal proceedings and justice suffers. And the 14th Amendment of the U.S. Constitution suffers, that is, is effectively repealed by a misbehaving individual, an attorney, which is unconstitutional vis-a-vis the actual process prescribed in the U.S. Constitution itself requiring both Houses of Congress and 38 states to ratify.

REASON FOR GRANTING THE WRIT

The prepositional phrase " UNDER **COLOR OF STATE LAW** " has been stated several times within the context of this petition for writ of certiorari. This is because the prepositional phrase " **UNDER COLOR OF STATE LAW** ", and the source where it was first encountered, have greatly influenced the perception and analysis of the events and circumstances of this case for 3½ years, and has therefore influenced the opinions,

observations, thoughts, and feelings of the petitioner REH. The source was **SCREWS v. U.S.** 325 U.S. 91 and the opinion of Douglas J., in which Chief Justice, Mr. Justice Black and Mr. Justice Reed concur, and the opinion of Mr. Justice Rutledge, concurring in the result.

SCREWS v. U.S., supra, at page 109 gives a definition of " **UNDER COLOR OF STATE LAW** " citing **UNITED STATES v. CLASSIC**, 313 U.S. 299, 326, wherein the U.S. Supreme Court said:

"' Misuse of power, possesed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ' UNDER COLOR OF ' STATE LAW. '"

SCREWS v. U.S., supra, at page 110, in defense of the holding of **U.S. v. CLASSIC**, supra,:

"...It followed the rule announced in EX PARTE VIRGINIA, 100 U.S. 339, 346, that a state judge who in violation of state law discriminated against negroes in the selection of juries violated the Act of March 1, 1875, 18 Stat. 336. It is true that that statute did not contain the words under "' color '" of law. But the Court in deciding what was state action within the meaning of the Fourteenth Amendment held that it was immaterial that the state officer exceeded the limits of his authority.'"...as he acts in the name and for the State, and is clothed with the State's

power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it '" 100 U.S. at p. 347. And see VIRGINIA v. RIVES, 100 U.S. 313, 321. "

And further in **SCREWS v. U.S.**, supra, at page 111:

"...It is clear that under 'color' of law means under 'pretense' of law. Thus the ambits of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."

The phrase **" whether they hew to the line of their authority or overstep it "** clearly describes the decision of the N.H. Strafford County Probate Court in that it did not hew to the line of its authority and overstepped it, when in its decree of April 11, 1985, it granted the guardianship of person and estate of the petitioner ODH to the OPG in violation of N.H. RSA 547-B:3,II. (See **STATUTES INVOLVED**, Page 4). The N.H. Strafford County Probate Court went against the will of both petitioners ODH and REH (mutually related persons), and thereby **" UNDER COLOR OF STATE**

LAW " deprived them both of due process, and discriminated against them as opposed to the OPG, violating their rights pursuant to the 14th Amendment of the U.S. Constitution. The N.H. Supreme Court in effect conspired to cover-up and protect the N.H. Strafford County Probate Court by in its order of January 31, 1986 (See A7) saying " **Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985** ", knowing full well, that it was not the petitioner REH who failed, but a misbehaving hedonistic attorney, who out of intentional irresponsibility and intentional negligence saw to it, that the appeal of the April 11, 1985 decree was not preserved, perhaps even for reasons of personal profit and loyalty to persons with whom she was friendly. This in time led to the " **frivolous** " decision based on the N.H. Supreme Court order of January 31, 1986 made by the N.H. Strafford County Superior Court in its order of October 21, 1987 (See A8) dismissing its # 87-E-125,

which became N.H. Supreme Court # 88-074 (See A34) and is now before this U.S. Supreme Court in the instant petition for writ of certiorari. In sustaining the order of October 21, 1987, the N.H. Supreme Court effectively protected the respondents from trial of the charges of fraud and perjury, found in N.H. Strafford County Superior Court # 87-E-125, and obstructed justice.

It is a well known maxim that " To err is human ". The legal system, a human endeavor, seems to have great difficulty recognizing, that being a human endeavor, it too is prone to making errors, and should be ready to correct them before molehills become mountains. Cover-up seems to be the preferred mode to deal with errors, at least so it seems in this case, and the original molehill has become a mountain, and an agravating proliferation of related cases has occurred. Hopefully, success with this petition for writ of certiorari will begin the process of remedying error, enforcing N.H. RSA

547-B:3,II, and restoring the relationship of mother and son, petitioners ODH and REH to what it should be, which is both lawful and constitutional. It would have been far more appropriate, for the N.H. Supreme Court to have strictly enforced N.H. RSA 547-B:3,II and thus acted from the basis of Part 1, Article 38 of the N.H. Constitution, than to have strictly enforced its own Rule 7, and thereby excuse, condone, permit, and encourage arbitrary, capricious, unreasonable, illegal, and unconstitutional acts of the lower state courts; and obstructed justice, in that perjury was likewise excused, condoned, permitted, and encouraged; condoned, permitted, and encouraged incompetency, irresponsibility, and negligence of attorneys. Considering the hierarchy of law, which places the U.S. Constitution, in order, above federal statutes, above the state constitutions, above state statutes, and most certainly above lowly state court rules, the enforcement of N.H. RSA 547-B:3,II and through it the 14th Amendment

would indeed have been most appropriate. It would have freed the petitioners ODH and REH from the tyrannous and appressive acts of the lower state courts acting **UNDER COLOR OF STATE LAW**. By excusing, condoning, permitting, encouraging and thus shielding the lower state courts, the N.H. Supreme Court has demonstrated conspiracy and intent to violate the rights, immunities, and privileges of the petitioners ODH and REH guaranteed by the federal constitution, and therefore to have violated 18 U.S.C. §§ 241 and 242 (See Page 3). By picking and choosing, which laws will be enforced and supporting convenient and useful perjury, the N.H. Supreme Court has effectively created a special body of law for the petitioners ODH and REH, which is discriminatory and contrary to the equal protection of laws clause of the 14th Amendment, and in doing so, they have made a mockery of the due process clause of the 14th Amendment as well. The N.H. Supreme Court has furthermore violated the 8th Amendment of the

U.S. Constitution in creating and perpetuating an environment of cruel and unsual punishment for two citizens of the U.S. for these many years. The compounding of errors, errors of law, and injustice, which has resulted through the callousness of the N.H. Supreme Court can not be described as " **frivolous** ". Is law to reign and through it the people, or are men, judges, above the law, and therefore the masters of the people?

CONCLUSION

This petition for writ of certiorari should be granted, or the petition should be granted and the decisions below summarily reversed, because these decisions were an abuse of state power made " **UNDER COLOR OF STATE LAW** ", and in violation of the 14th Amendment of the U.S. Constitution, as due porocess was denied as was equal protection of the law.

It might be appropriate for the general rule concerning attorney misconduct and

its nefarious and harmful consequences to the client by imputing responsibility to the client for attorney incompetence, irresponsibility, and negligence, be considered for repeal, revocation and prohibition.

It might be appropriate to indict and prosecute the N.H. Supreme Court pursuant to 18 U.S.C. §§ 241 and 242 for conspiracy and intent to abrogate the civil rights, privileges, and immunities of petitioners ODH and REH guaranteed by the U.S. Constitution.

DATE: December 16, 1988

Respectfully submitted,

Roland E. Hemon

Roland E. Hemon, Pro se
10 Oak St.
Dover, N.H. 03820
Tel. (603) 742-1879

AFFIRMATION

STATE OF NEW HAMPSHIRE, STRAFFORD COUNTY

I hereby certify that the above-named Roland E. Hemon did personally appear and made solemn oath that the statements contained in **PETITION FOR WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT** filed with the U.S. Supreme Court are true to the best of his knowledge.

DATE: December 16, 1988 Carol M. Clifford

Notary Public

My Commission Expires October 2, 1989

CERTIFICATE OF SERVICE

I hereby certify, that pursuant to U.S. Supreme Court Rule 28.3, three copies of this petition for writ of certiorari have been mailed to the respondents:

OFFICE OF PUBLIC GUARDIAN, 6 White St., Concord, N.H. 03301 -- Tel. (603) 224-8041

Mrs. Beatrice Houle, 5 Patricia St., Somersworth, N.H. 03878 -- (603) 692-4022

Mrs. Heloise Davis, HCR 61, Box 64, Morgan, Vermont, 05853 -- (802) 723-4745

Mr. Armand Hemon, Box 193, W. Stewartstown, N.H. 03597 -- (603) 246-8268

DATE: December 16, 1988

Roland E. Hémon

Roland E. Hemon, Pro se

APPENDIX

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

88-074

In Case No. 88-074 Roland Hemon & a. Office of Public Guardian & a. the court upon September 23, 1988 made the following order:

Plaintiff's petition for entrance is denied.

Distribution:

Strafford County Superior Court (2)

John D. MacIntosh, Esquire

Gerard A. Spegman, Esquire

Donna R. Craig, Supreme Court

Mr. Roland E. Hemon

File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

1985 TERM STRAFFORD COUNTY

MAY SESSION PROBATE COURT

In Re : Olivette Hemon

MOTION TO EXTEND TIME IN WHICH TO FILE APPEAL UNTIL TIME OF DISPOSITION ON PENDING MOTIONS

NOW COMES Roland Hemon, through counsel, cross petitioner in the above matter, GDN #72 and states:

1. Trial was conducted in this matter on several days concluding January 21, 1985, Strafford County Probate Court.

2. After January 21, 1985, and submission to the Probate Court for decision on the merits, several post-trial motions relating to the proceeding were filed by the parties. Various cross-motions and objections were filed in response to the motions.

3. The following motions, objections and cross-motions relate to final post-trial

disposition of the case, and have not yet been heard or disposed of in any fashion:

Motion to Preserve Assets and for Accounting dated 2/13/85
Objection to Motion to Preserve Assets and for Accounting and Cross Motion to Compel dated 2/25/85
Objection to Cross Motion to Compel dated 3/8/85
Motion for Release of Funds dated 3/8/85
Motion to Inform Court of Assets dated 3/8/85
Motion to Remove Temporary Guardian of Person and Estate dated 3/11/85
Objection to Motion for Release of Funds dated 3/19/85
Objection to Motion to Inform Court of Assets dated 3/20/85
Motion to Inform Court and to Request Immediate Consideration of All Matters Pending Before the Court in this Case dated 3/14/85
Motion for Extension of Temporary Guardianship of Person and Estate and Objection to Motion to Remove Temporary Guardian dated 3/14/85
Objection to Motion to Remove Temporary Guardian of Person and Estate dated 3/19/85
Objection to Motion for Extension of Temporary Guardianship dated 3/25/85

4. On April 11, 1985 this Court issued its Decree resulting from the guardianship proceedings concluded on January 21, 1985. A portion of said Decree provides:

" Accordingly, if a verbatum transcript of the record would contradict any rulings of this decree, the contradiction is based upon testimony or statements which the court regarded as not being credible and, if otherwise, it is considered that the error is

harmless based upon its irrelevancy or immateriality. If, in any particular, the court is wrong, any party to this proceeding may have fourteen (14) days from the issuance of this decree to present a specification and record of the transcript which supports his, her or their request for any particular finding of fact or ruling of law. In addition to the pertinent transcript page(s), the specification shall include specific page reference(s) for each request. The court will then review the submission and if warranted, restate its finding. The opportunity so afforded does not encompass leave to expand upon requests or to make new or additional requests."

5. Movant herein filed Motion to Stay Effective Date of Decree dated April 11, 1985 because transcripts had not yet been typed and completed by the Court Reporter. Movant sought the Probate Court's Order Staying the Effective Date of its Decree until 14 days after the parties had received the transcript. Said Motion has not yet been heard or acted upon, and two objections thereto are on record.

6. April 18, 1985 this court issued its Decree which sua sponte deleted the above language from the Order, and otherwise reaffirming the previous Decree.

7. **Counsel for movant was out of the country and on vacation from April 24 - May 12, 1985 inclusive.**

8. The transcript was not completed until May 10, 1985.

9. Until such time as all pending motions, objections and cross-motions are heard and determined, the case is not ripe for appeal.

WHEREFORE, movant prays:

A.That this Honorable Court extend the time in which to file appeal until such time as all pending motions, objections and cross-motions have been determined;

B. For such other relief as is just.

Respectfully submitted,

Dated: May 16, 1985 Signed:

Roland E. Hemon and

Terrie Harman
HARMAN LAW OFFICES
385 Islington St.
Portsmouth, N.H. 03801

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion was mailed to James Koromilas, Esquire, John Lyons, Esquire, Joan Gilmore, Esquire, Anthony Hartnett, Esquire and the Strafford County Probate Court.

Signed:

Terrie Harman

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

85-319

In Case No. 85-319 In Re Olivette D. Hemon the court upon January 31, 1986 made the following order:

" Office of Public Guardian's motion for summary affirmance is **denied**; motion for ruling on motion for summary affirmance is moot. **Since the petitioner failed to preserve his right to appeal with respect to the decision of April 11, 1985 on the merits**, the only decision below preserved for appeal is that of June 11, 1985. Petitioner does not raise any questions alleging that the probate court abused its discretion; therefore, the decision below of June 11, 1985, is summarily affirmed in accordance with Rule 25(1)(a)."

A TRUE COPY

ATTEST signed Carol A. Belmain,

Deputy Clerk of the N.H. Supreme Court

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

87-E-125

Hemon v. Office of Public Guardian et al.

Order on Motion to Dismiss:

" The issues raised in this petition have been determined adversely to the plaintiff. I find the petition is **frivolous.** The guardianship ruling of April 11, 1985 **was not appealed** and is final. The motion is granted.

I order the plaintiff to pay attorne;y fees in the amount of $500.00 under Superior Court rule 59. Payment shall be made direct to attorney MacIntosh within seven days of the date of this order.

Date: October 21, 1987 Signed:

Joseph P. Nadeau

Presiding Justice

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. SUPERIOR COURT

85-E-155

OLIVETTE D. HEMON by and through THE OFFICE OF PUBLIC GUARDIAN v. ROLAND E. HEMON

ORDER

Based upon evidence presented at trial, the verdict in favor of plaintiff dated July 2, 1987, and the equity powers of this Court, it is hereby ordered, adjudged and decreed:

1. Defendant shall deliver forthwith three quiltclaim deeds transferring to his mother, Olivette Hemon, sole title to the real estate described below. Defendant shall also be responsible for discharging any and all liens or other encumbrances on the properties which may have occurred after December 30, 1983. Said real estate includes:

A. Property and buildings located in York Harbor, Maine (Knoll Crest) as described in Book 3228, Pages 33-36 at the York County, Maine Registry of Deeds;

B. Property located in Brevard County, Florida as described in Book 2500, Page 1967 of the public records of Brevard County, Florida;

C. Property located in Putnam County, Florida as described in Book 311, Page 1758 of the public records of Putnam County, Florida.

2. Defendant shall forthwith transfer sole possession and title to plaintiff of any and all personal property located at Knoll Crest, York, Maine, including but not limited to furniture, carpets, and rugs, books, linens, curtains, pictures, silverware and dishes.

3. Defendant shall transfer possession to plaintiff of all stocks, bonds, bank accounts, promissory notes and negotiable instruments in the name of Olivette Hemon, individually or jointly with the defendant, as of the date of this order.

4. Defendant shall forthwith deliver to plaintiff sole title and possession of plaintiff's Pacer automobile.

5. Plaintiff shall be entitled to recover from

defendant her taxable costs and expenses of this litigation in accordance with RSA 525:13-14. Plaintiff shall present to the Court and defendant an itemization of such expenses and costs for approval by the Court and payment by the defendant.

6. In the event that defendant fails to comply with any of the orders as set forth above, he may be found, upon notice of hearing, to be in contempt of court. Until the defendant complies with the orders of this Court, plaintiff shall continue to have lien on properties owned by the defendant at 10 Oak Street in Dover, New Hampshire, and Freedom, New Hampshire. In the event that defendant does not fully satisfy the order, a writ of execution will issue on said properties in order to satisfy judgment.

7. In consideration of the services rendered by the defendant to Olivette Hemon as regards her real estate and personal needs, the Court declines to require an accounting of the

income and expenses relating to Knoll Crest from December 30, 1983.

8. In further consideration of the relationship between the defendant and Olivette Hemon, the Court declines to require the plaintiff to account for the funds representing the value of certificates of deposit transferred to Roland Hemon between January 1984 and August 1984.

9. Title to stocks, bonds, bank accounts, promissory notes and negotiable instruments currently in the name of the defendant only shall remain exclusively with him.

10. Title to all personal property in the possession of the defendant is awarded exclusively to the defendant.

Dated: 7/23/87

Signed:

Joseph P. Nadeau

Presiding Justice

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIAN FOR OLIVETTE HEMON

GDN # 72

From the transcript of proceedings of August 21, 1984, an ex-parte hearing at which Olivette Hemon did not attend, not having been served. An example of perjury committed by Heloise Davis at this hearing is to be found on pages 51 and 52 of the transcript:

"...And this is when I presently came involved and got her an appointment for her with Dr. Reed and this is when she was found to have Parkinsons..."

Heloise Davis was along with Armand Hemon a petitioner for guardianship of their mother, Olivette Hemon, against her will and desire.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Page 130, it is found that Heloise Davis contradicts unequivocally her testimony under oath given at the hearing of August 21, 1984:

"Q. How many times have you met Dr. Susan Reed?
A. I have never met Dr. Reed.
Q. Do you know where her office is?
A. I have no idea.
Q. You've never seen her?
A. No.
Q. Your testimony on August 21st, 1984, and this is when I presently became involved and got her an appointment for her with Dr. Reed.
A. I did not get her an appointment with Dr. Reed, Bea Houle did.
Q. Well, your testimony on the 21st says that you got the appointment with Dr. Reed, is that right or wrong?
A. That's wrong..."

Heloise Davis thus shows either having a poor memory and thus failing to meet the requirement for a credible witness, or having a good memory and having wilfully and intentionally committed perjury. Either way,

since Heloise Davis is a key participant and petitioner, all of the proceedings are ill founded and ill grounded, and compromised. Though the complaints with respect to this have been frequent in the state courts, everything has been done to cover-up and protect this person, and all actions, decrees, rulings, orders etc. of the state courts have this kind of credibility as foundation and legitimacy, and as justification for violations of many state statutes and the state constitution, as well as federal statutes and the federal constitution. Of greater import is the violation of the basic rights of Olivette D. Hemon, who as a result of all of these proceedings carried on " **UNDER COLOR OF STATE LAW** " was brutalized psychologically and the quality of her life destroyed. Injurious repercussions fell on the petitioner, Roland E. Hemon, in the case before this Court as well, because of his self-sacrificing support of his mother, Olivette D. Hemon, the co-petitioner.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Page 190, we find the testimony of Beatrice Houle, one of the respondents of this case. This testimony confirms the fact, that Heloise Davis, another respondent, did indeed perjure at the ex-parte hearing of August 21, 1984, when she said under oath, that she had made the appointment with Dr. Reid. It should be noted, that Beatrice Houle was present at the hearing, when this statement was made by Heloise Davis, and made no attempt to correct this false testimony at this time, that is August 21, 1984. Now in January of 1985 we have:

" Q. There's a notation at the top -- I'm not asking you to recognize the writing, but the notation at the top of the page is 5/4/83, would that be the first appointment with Dr. Reed?
A. I imagine.

Q. Do you think it was earlier than that?
A. I can't say, I really don't ---
Q. Okay. So it was at least May 4, 1983?
A. Yeah.
Q. Okay.
A. It was the first appointment she had with Dr. Reed, because I made the appointment.
Q. And Roland went with you to that appointment?
A. Oh, yes.
Q. Did you ever take Olivette to an appointment alone?
A. No. He always made sure he came with me.
Q. Was he concerned about her medical condition, do you think?
A. He wanted to know what -- what the story was..."

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. III, Page 538, we have testimony of Heloise Davis, which states even after hearing respondent Beatrice Houle say otherwise, that the petitioner in this case, Roland E. Hemon, only participated at the second appointment with Dr. Reid. In spite of the fact, that the 2 participants in the Dr. Reid affair both agree, that the petitioner Roland E. Hemon's participation was every time, Heloise Davis, who did not participate, who was not consulted, and who lived 200 miles away, insists only the second time. Nothing so underscores the lack of credibility of this witness and petititioner for guardianship as the fact, that under the circumstances, she refuses to recognize the truth and tries to circumvent it, that truth being, that the petitioner, Roland E. Hemon,

was interested in the welfare of his mother, and did actively do something about it. This of course was in to order to protect her and the respondent Armand Hemon's petition for guardianship, which depended upon their allegations, that the petitioner, Roland E. Hemon, was ignoring the needs of his mother, the co-petitioner, Olivette D. Hemon. The testimony of the respondent Heloise Davis:

" Q. In fact, is it true today that Bea Houle and Roland Hemon took Olivette to see Dr. Reed.
A. I spoke to Bea about that and she said that she had taken my mother by herself the first time and Roland went the second time.
Q. But she told us on January 7th, in this court they had both gone to the doctor every time she ---
A. I just told you that the second time.
Q. Did you hear my question?
A. That I had said that Bea Houle -- Roland went with Bea Houle to Dr. Reed's.
Q. That's right.
A. And I said the first time she went alone, the second time Roland went with her.
Q. But you heard Bea Houle tell us here in this courtroom that Roland and Bea went with Olivette both times, did you hear Bea Houle ---
A. Not both times, no..."

It should be noted, that Heloise Davis is contradicting a person, whom she asked to testify in her behalf and her cause.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF OLIVETTE HEMON

GDN #72

From the transcript of proceedings of October 26, 1984, Page 156, the respondent here, Armand Hemon, and petitioner in the above captioned matter is found to have testified as follows:

"...She (Olivette Hemon) willing came over to my car, where my car was. I was standing outside. She gave me one big hug and we stood there for a while and we requested that since I was taking her back up to the North Country,..."

The Newington Police Log, infra, contradicts this statement of Armand Hemon and asserts the contrary fact, that it was contrary to her will, that she wanted to stay with son #2, defined as Roland E. Hemon, the petitioner here. Further, the phrase " taking her back to the North Country " is inaccurate as her home for 34 years was 200 miles from the " North Country, namely York Harbor, Maine, and Dover, N.H.. If the petitioner's home had been in the

North Country, then proper venue for the guardianship proceedings would have been there instead of the Strafford County Probate Court, or even more appropriately the York County Probate Court in Alfred, Maine, as she had lived uninterruptedly since 1950 in York Harbor, Maine, in her home she called Knollcrest. In no way could the North Country (which refers to northern Vermont) be considered a place she had left and to which she was being returned, and thus justify the statement made by the respondent Armand Hemon, " ...since I was taking her back up to the North Country...".

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF OLIVETTE HEMON

GDN #72

From the transcript of proceedings of October 26, 1984, Page 167, the respondent here, Armand Hemon, and petitioner in the above captioned matter is found to have testified as follows under cross-examination:

" Q. Looking back to the Mrs. and Me incident, isn't it true that Olivette refused to ---
A. The Mrs. and Me.
Q. This is the ---
A. Oh, all right. The restaurant.
Q. The restaurant.
A. Yes.
Q. And do you know where that is?
A. Yes, it's on Route 1A, probably four or five miles down from York, York Village.
Q. And isn't it true that at the Mrs. and Me, Olivette refused to go with you?
A. She initially did, yes. "

The above testimony refers to an incident, that occurred about an hour before the incident of A20. Thus the respondent Armand Hemon admits, that at Mrs. and Me the petitioner Olivette D. Hemon did **NOT** want to go with him, while asserting, that one hour later at the Newington Parking lot she did

want to go with him, which assertion is contradicted by Officer W. Cronin of the Newington Police Department, who maintains in the police log, infra, that at the Newington Parking Lot she still did **NOT** want to go with the respondent Armand Hemon. The petitioner being at Mrs and Me and at the Newington Parking Lot knows, that the petitioner Olivette D. Hemon was consistently adamant in **REFUSING** to go with the respondent Armand Hemon.

Armand Hemon thus shows either having a poor memory and thus failing to meet the requirement for a credible witness, or having a good memory and having wilfully and intentionally committed perjury. Either way, since Armand Hemon is a key participant and initial petitioner for guardianship along with the co-respondent Heloise Davis, all of the proceedings are ill founded and ill grounded, and compromised. Though the complaints with respect to this have been frequent in the state courts, everything has

been done to cover-up and protect this person, and all actions, decrees, rulings, orders etc. of the state courts have this kind of credibility as foundation and legitimacy, and as justification for violations of many state statutes and the state constitution, as well as federal statutes and the federal constitution. Of greater import is the violation of the basic rights of Olivette D. Hemon, who as a result of all of these proceedings carried on " **UNDER COLOR OF STATE LAW** " was brutalized psychologically and the quality of her life destroyed. Injurious repercussions fell on the petitioner, Roland E. Hemon, in the case before this Court as well, because of his self-sacrificing support of his mother, Olivette D. Hemon, the co-petitioner.

A25

POLICE DEPARTMENT

NEWINGTON, N.H. 03801

DAILY REPORT

DATE	DAY	WEATHER
8/30/84	THURSDAY	Clear, Humid, Hazy, Hot

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2. ..." and Brother #2: ROLAND E. HEMON DOB: 05-01-26 of Oak St. Dover, N.H. who had physical Custody of Mrs. Hemon. Mrs. Hemon, however, wanted to stay with Brother #2..."

Officer Cronin was the policeman involved, and the policeman, who made the report found in the police log of 8/30/84.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. II, Page 360, we have testimony of Charles Hemon, son of the respondent Armand Hemon, describing the aftermath of the involuntary custodianship thrust upon the petitioner Olivette D. Hemon by her son, the respondent Armand Hemon:

" A. No. She was just sitting in the front seat of the car when I saw her.
Q. Did she ask any questions?
A. Why everything had to be so complicated.
Q. Anything else?
A. No. Just general questioning the whole situation, you know, series of events, why they had to be.
Q. Why they had to be?
A. Why they had to be going on. Why it had to be that way.
Q. Did she appear to understand what was going on?
A. No.
Q. Did she appear to be upset with what was going on?
A. Yes....
Q. You can answer that question. Was she upset?
A. Yes.
Q. Did she say why?
A. Yes, because everything just seem, I guess, it appeared to her, that her whole life

was crumbling and everything was mismatched."

This testimony by the son of the respondent Armand Hemon denies the hugs and kisses and joyful aspects testified to by the respondent Armand Hemon as he took possession of his mother, the petitioner Olivette D. Hemon against her will, **UNDER COLOR OF STATE LAW**, and violating federal kidnap statutes, on August 30, 1984. The petitioner Olivette D. Hemon was not happy and feeling liberated from an oppressor. Her upset confirms the involuntary nature of the incident. In the morning the petitioner, Olivette D. Hemon was happy and looking forward to a nice long week-end at North Conway, N.H.. A motel , Green Granite, had the reservations for both petitioners, Olivette D. Hemon and Roland E. Hemon. The end of the day found her in captivity where " her whole life was crumbling and everything was mismatched. "

The abject lack of credibility of the respondent, Armand Hemon, is further demonstrated by the testimony of his son,

Charles Hemon, and yet it is this person along with the respondent Heloise Davis, who through misleading the legal system, have produced events and proceedings so devastating to the lives of both the petitioners, Olivette D. Hemon and Roland E. Hemon. Their lack of credibility does not excuse the state legal system, once involved, for violating its own state statutes, court rules, and the state and federal constitutions. Had the state legal system addressed the credibility problem in the beginning, then perhaps it would not have found it necessary to engage in cover-up to extent it has occurred. The state legal system can not say it did not know, for the petitioner, Roland E. Hemon has on every occasion pointed to this credibility and perjurous aspect.

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. PROBATE COURT

IN THE MATTER OF GUARDIANSHIP OF OLIVETTE D. HEMON, GDN #72

From the transcript of proceedings of January 7, 11, 16, and 21 of 1985, Vol. I, Pages 190, 191, and 192, we have testimony of Beatrice Houle, one of the respondents of the instant case, describing her observation of the aftermath of the involuntary custodianship thrust upon the petitioner Olivette D. Hemon by her son, the respondent Armand Hemon:

" Q. You say the last time you saw Olivette was at the end of August, 1984, when Armand brought her over?

A. Right.

Q. After he had acquired custody of her?

A. Right.

Q. And she was not looking so well at the time?

A. She was looking horrible. So ill.

Q. What about her sense of self. How did she perceive herself?

(Objection and rephrase).

Q. You got a good chance to see her?

A. Oh, I sure did. Poor thing. She couldn't ---

Q. Did she appear to be ---

A. -- she couldn't even come in the house. We had to -- I had -- she couldn't even make it to the house. I had to put her on the picnic table on the lawn.

Q. Did she appear to be afraid?

A. She was just a confused, ill old lady. She was a very ill woman.
Q. Did it appear to you that she was afraid?
A. Afraid of what?
Q. Just afraid? Just afraid. Was her demeanor that of fear?
A. No, confusion.
Q. Confusion. Did she ---
A. Complete confusion.
Q. Did she say why she was confused?
A. When you're as confused as she was, I don't think you realize you're confused.
Q. What about not being able to walk, do you mean she couldn't walk at all?
A. No, she could not walk. Her -- son Armand and his son helped her out of the car and they brought her to the -- they brought her to the table.
Q. Did she appear to be happy?
A. How could she be happy, she was so sick..."

This testimony of the respondent Beatrice Houle, niece of the petitioner Olivette D. Hemon, concerning the aftermath of the respondent Armand Hemon having taken possession of his mother against her will, as is recorded in the NEWINGTON POLICE LOG, described graphically the breakdown of the petitioner Olivette D. Hemon as a result of the events of August 30, 1984, namely her abduction **UNDER COLOR OF STATE LAW.** Before the abduction, the petitioner Olivette D.

Hemon was accustomed to walking unaided and unsupervised a mile in about 25 minutes. This testimony of the respondent Beatrice Houle along with that of Charles Hemon, shows how crushed the petitioner Olivette D. Hemon was by the recent events, which ended her freedom and brutalized her psychologically to the point of physical collapse. The morning of August 30, 1984, the petitioner Olivette D. Hemon was cheerful and happy at the prospect of a long Labor Day week-end in North Conway, N.H.. Little did the petitioners Olivette D. Hemon and Roland E. Hemon realize as they left for the long week-end, the disastrous end of that day.

This testimony by the respondent Beatrice Houle denies the hugs and kisses and joyful aspects testified to by the respondent Armand Hemon as he took possession of his mother, the petitioner Olivette D. Hemon against her will, **UNDER COLOR OF STATE LAW**, and violating federal kidnap statutes, on August 30, 1984. The petitioner Olivette D. Hemon was not happy

and feeling liberated from an oppressor. Her upset confirms the involuntary nature of the incident. The end of the day found her in captivity where " her whole life was crumbling and everything was mismatched. ", as described graphically by her grandson, Charles Hemon.

The abject lack of credibility of the respondent, Armand Hemon, is further demonstrated by the testimony of his cousin the respondent Beatrice Houle, and yet it is this person along with the respondent Heloise Davis, who through misleading the legal system, have produced events and proceedings so devastating to the lives of both the petitioners, Olivette D. Hemon and Roland E. Hemon. Their lack of credibility does not excuse the state legal system, once involved, for violating its own state statutes, court rules, and the state and federal constitutions. Had the state legal system addressed the credibility problem in the beginning, then perhaps it would not have found it necessary to engage in cover-up to

extent it has occurred. The state legal system can not say it did not know, for the petitioner, Roland E. Hemon has on every occasion pointed to this credibility and perjurous aspect of the case, which thoroughly undermines the grounds that the N.H. state courts used as a basis for proceeding. Hence everything that happened to the petitioners Olivette D. Hemon and Roland E. Hemon was **UNDER COLOR OF STATE LAW**, was oppressive and tyrannous, most certainly in violation of the due process clause and equal protection of laws clause of the 14th Amendment of the U.S. Constitution, in violation of 18 U.S.C. §§ 241 and 242 of the U.S. criminal code, and 18 U.S.C. §§ 1201(a)(1) and 1201(b), kidnaping. The examples cited in this Appendix of perjury and misleading statements are not the only such statements in the record. They are representative of the testimonial output of the participants, who so drastically devastated the life of the petitioners Olivette D. Hemon and Roland E. Hemon.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

March 1, 1988

Mr. Roland E. Hemon
10 Oak St.,
Dover, N.H. 03820

John D. MacIntosh, Esquire
Epstein & Burke
16 Low Avenue
Concord, N.H. 03301

Gerard A. Spegman, Esquire
P.O. Box 778
Portsmouth, N.H. 03801

Re: 88-074 Roland E. Hemon, for himself & Olivette D. Hemon, his mother v. Office of Public Guardian, Armand Hemon, Heloise Davis, & Beatrice Houle

On February 26, 1988, your filing in refrence to the above-captioned matter was received in the clerk's office and has been docketed as case number 88-074. A court order will be issued in reference to acceptance or declination after the screening process is completed.

Any subsequent correspondence or pleadings which are filed with the Supreme Court by any party in the case must have the correct supreme court docket number, or

assessments will be levied. Please refer to Rule 26(8), effective September 1, 1987.

Very truly yours,
Signed:
Carol A. Belmain
Deputy Clerk

Distribution: Addressees
Strafford County Superior Court
Howard J. Zibel, Deputy Clerk
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 88-074 Roland E. Hemon & a. v. Office of Public Guardian the court upon June 29, 1988 made the following order:

"Notice of Appeal is declined. See Rule 7(1)."

Distribution:

Mr. Roland E. Hemon
Strafford County Superior Court (2)
John D. MacIntosh, Esquire
Gerard A. Spegman, Esquire
Donna R. Craig, Supreme Court
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 88-074 Roland E. Hemon & a. v. Office of Public Guardian the court upon July 29, 1988 made the following order:

" Plaintiff's motion for reconsideration is denied."

Distribution:

Roland E. Hemon
John D. MacIntosh, Esquire
Gerard A. Spegman, Esquire
Strafford County Superior

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

August 10, 1988

Mr. Roland E. Hemon
10 Oak Street
Dover, N.H. 03820

Re: 88-074 Hemon v. Office of Public Guardian

Dear Mr. Hemon:

On August 1, 1988, this office received from you a motion for summary reversal in the above-captioned matter. This obviously crossed in the mail with the Court's denial of your motion for reconsideration, which was issued on July 29, 1988. At the time of the filing of your motion for summary reversal, the court had made a final determination in this case; therefore, the motion for summary reversal will not be distributed to the court, and you will receive no ruling thereon.

Very truly yours,
Signed:
Howard J. Zibel
Deputy Clerk

cc. John D. MacIntosh Esquire
Gerard A. Spegman, Esquire